

the applicable costs for the combined total of all task orders issued to date at six month intervals.

Example to paragraph (c)(1). Two task orders are issued under an 8(a) indefinite quantity service contract during the first six months of the contract. If \$100,000 in personnel costs are incurred on the first task order, 90% of those costs (\$90,000) are incurred for performance by the Participant's own work force, and the second task order also requires \$100,000 in personnel costs, the Participant would have to perform only 10 percent of the personnel costs on the second task order because it would still have performed 50% of the total personnel costs at the end of the six-month period (\$100,000 out of \$200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

Example to paragraph (c)(2). Where a contract guarantees a minimum of \$100,000 in professional services and the first task order is for \$60,000 in such services, the Participant may perform as little as \$10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to \$40,000 to ensure that it performs 50% of the \$100,000 guaranteed minimum ($\$10,000 + \$40,000 = \$50,000$ or 50% of the \$100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a

Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.

§ 124.511 How is fair market price determined for an 8(a) contract?

(a) The procuring activity determines what constitutes a "fair market price" for an 8(a) contract.

(1) The procuring activity must derive the estimate of a current fair market price for a new requirement, or a requirement that does not have a satisfactory procurement history, from a price or cost analysis. This analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. The analysis must also consider any cost or pricing data that is timely submitted by SBA.

(2) The procuring activity must base the estimate of a current fair market price for a requirement that has a satisfactory procurement history on recent award prices adjusted to ensure comparability. Adjustments will take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be appropriate.

(b) Upon the request of SBA, a procuring activity will provide to SBA a written statement detailing the method it has used to estimate the current fair market price for the 8(a) requirement. This statement must be submitted within 10 working days of SBA's request. The procuring activity must identify the information, studies, analyses, and other data it used in making its estimate.

(c) The procuring activity's estimate of fair market price and any supporting data may not be disclosed by SBA to any Participant or potential contractor.

(d) The concern selected to perform an 8(a) contract may request SBA to protest the procuring activity's estimate of current fair market price to

the Secretary of the Department or head of the agency in accordance with § 124.505.

§ 124.512 Delegation of contract administration to procuring agencies.

(a) SBA may delegate, by the use of special clauses in the 8(a) contract documents or by a separate agreement with the procuring activity, all responsibilities for administering an 8(a) contract to the procuring activity except the approval of novation agreements under 48 CFR 42.302(a)(25).

(b) This delegation of contract administration authorizes a contracting officer to execute any priced option or in scope modification without SBA's concurrence. The contracting officer must, however, notify SBA of all modifications and options exercised.

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing a specific 8(a) contract.

(2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement.

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(ii)(A) For a procurement having a revenue-based size standard, the pro-

curement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

(2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a joint venture between a protege firm and its approved mentor (*see* § 124.520) will be deemed small provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in § 124.519.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by § 124.520, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under